

JOSE MANUEL XITUMUL SOTO,

Plaintiff,

-V-

THE VILLAGE IN TIMES SQUARE LLC *et al.*,

Defendants.

20-CV-5463 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On March 25, 2021, the parties jointly filed their proposed settlement agreement and requested Court approval pursuant to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). Dkt. 25. All parties are ordered to appear before the undersigned for a conference to discuss the proposed settlement agreement on April 8, 2021 at 10:00 a.m. The conference will occur via teleconference. At the scheduled time, counsel for all parties should call (866) 434-5269, access code 9176261.

Specifically, counsel should be prepared to address the following issues:

1. Whether it is fair and reasonable that the proposed settlement agreement bars Plaintiff from future employment with Defendants or “any restaurant operating under the ‘Joe’s Pizza’ name.” *See* Dkt. 25-1 at 13. Because “[c]ourts in this Circuit have consistently rejected FLSA settlements that seek to prevent plaintiffs from having a future employment relationship with the defendant as contrary to the underlying aims of the FLSA,” *Zekanovic v. Augies Prime Cut of Westchester, Inc.*, 19 Civ. 8216 (KMK), 2020 WL 5894603, at *5 (S.D.N.Y. Oct. 5, 2020), counsel should be prepared to point the Court to cases in which courts approved similar provisions.


2. Whether it is fair and reasonable that the proposed settlement agreement includes broad general release provisions. *See* Dkt. 25-1 at 9-12. Because courts have rejected proposed settlement agreements that required Plaintiffs to waive “claims that have no relationship whatsoever to wage-and-hour issues,” *see, e.g., Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170, 181 (S.D.N.Y. 2015), counsel should be prepared to point the Court to cases in which courts approved broad release provisions and explain why the broad release provisions here are fair and reasonable.

3. Whether it is fair and reasonable that the attorneys’ fees here amount to approximately 40% of the overall settlement amount. *See* Dkt. 25 at 5. Because the Second Circuit has suggested that fees of this nature may be problematic, *see, e.g., Fisher v. SD Prot. Inc.*, 948 F.3d 593, 602 n.8 (2d Cir. 2020); *Cheeks*, 796 F.3d at 206, counsel should be prepared to point the Court to cases in which courts approved attorneys’ fees that equaled 40% or more of the total settlement amount and why that amount is fair and reasonable in this case.

The Court also notes that the parties failed to comply with 3.G of the Court’s Individual Rules and Practices in Civil Cases. By April 6, 2021, the parties shall submit the parties’ estimations for the number of hours Plaintiff worked each week, applicable wages, and a detailed breakdown of the justification for any requested attorneys’ fees. *See, e.g., Fernandez v. 219 Dominican Valle Corp*, No. 19 Civ. 9513 (JPC), 2021 WL 240721, at *2-4 (S.D.N.Y. Jan. 25, 2021).

SO ORDERED.

Dated: April 1, 2021
New York, New York



JOHN P. CRONAN
United States District Judge